



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

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### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking to retain rent received for a fixed term tenancy.

The hearing was conducted via teleconference and was attended by the landlord and two of her agents.

The agents testified that the landlord served the tenant with notice of this hearing on January 22, 2011 personally. I accept the tenant has been served with notice of this hearing sufficiently for the purposes of the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain the rent paid in advance on a fixed term tenancy, pursuant to Sections 45 of the *Act*.

### Background and Evidence

The tenancy began September 1, 2010 as a 1 year fixed term tenancy with rent paid for the full term in the amount of \$12,000.00 in advance.

The landlord submits the tenant provided a notice to end the tenancy dated December 5, 2010 with an effective vacancy date of January 31, 2011. In testimony the landlord provided that as of today's date the tenant has failed to vacate the rental unit.

The landlord stated that the tenant is refusing to leave until the landlord refunds the rent that was previously paid for the remainder of the tenancy.

### Analysis

Section 45 of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As a result, if the tenant decides to vacate the rental unit prior to the end of the fixed term he is able to do so, however, the tenant remains responsible for the rent for the

entire duration of the fixed term, unless the landlord has been able, after taking all reasonable steps to mitigate any loss, to re-rent the unit out prior to the end of the fixed term.

In this particular case, as the tenant has paid rent for the full fixed term and he is still in the rental unit, I find if the landlord is entitled to retain the rent paid. In addition, as the landlord already is in receipt of the rent, if the tenant disagrees with the landlord's retention of the rent, it is incumbent on the tenant to make an Application for Dispute Resolution seeking the return of rent paid.

### Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 03, 2011.

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Residential Tenancy Branch